

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ROBIN DIRK HORDON, an individual,  
  
Plaintiff,

v.

KITSAP COUNTY SHERIFF GARY  
SIMPSON, in his personal and official capacity,  
KITSAP COUNTY, a municipal corporation  
KITSAP COUNTY SHERIFF'S OFFICE, a  
division of Kitsap County, a municipal  
corporation, DEPUTY MIKE MERRILL, an  
individual, DEPUTY ANDREW AMAN, an  
individual, DEPUTY BRAD TROUT, an  
individual, DEPUTY TONY GRAHAM, an  
individual, DEPUTY BENJAMIN TEETS, an  
individual,  
DEPUTY TIMOTHY YOUNG, an individual,  
DEPUTY JUSTIN CHILDS, an individual,  
  
Defendants.

No. 3:20-cv-05464-RJB

SECOND AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF

Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff Robin Hordon files this  
Second Amended Complaint.

**I. INTRODUCTION**

1.1 This case arises out of the unlawful and unconstitutional arrest of a private citizen  
exercising his First Amendment rights to free speech. Responding to a call from officials from  
the Port of Kingston, three Kitsap County Sheriff's Deputies, Defendants Mike Merrill, Andrew  
Aman, and Brad Trout, arrested Plaintiff Robin Hordon, an activist who was engaged in political

1 free speech activities in “Mike Wallace Park,” a quintessential public forum, during the Port’s  
2 Fourth of July Celebration on July 4, 2019. The Deputies did so under standard operating  
3 procedure and policy of Kitsap County and its Sheriff’s Office, on the direction and advice of  
4 Deputy Prosecuting Attorney John Madden, and at the behest of the Port of Kingston Defendants  
5 for violation of their “sign policy,” which at the time purported to disallow any sign on Port  
6 property without prior permission of the Harbormaster.

7 1.2 Also in accordance with the policies of Kitsap County and its Sheriff’s Office,  
8 Deputy Trout then issued a “Criminal Trespass Warning” that purported to ban Mr. Hordon from  
9 the public park and other Port property “FOREVER/NO EXPIRATION.” The Trespass  
10 Warning does not provide notice of how this permanent ban can be appealed or challenged, and  
11 in fact there is no opportunity to be heard for individuals subjected to such Trespass Warnings to  
12 have such bans removed. Thus, such Trespass Warnings are issued under Kitsap County policy  
13 and authority at the unbridled discretion of an individual Sheriff’s Deputy.

14 1.3 After Deputy Trout booked Mr. Hordon, he set bail at \$50,000. This amount was  
15 excessive and forced Mr. Hordon to spend a night in the Kitsap County Jail. The next day, Mr.  
16 Hordon hired a private attorney to defend him against criminal charges. A judge released Mr.  
17 Hordon on July 5, 2019 on his own recognizance.

18 1.4 Several days later, on July 18, 2019, Mr. Hordon returned to Mike Wallace Park  
19 with his attorney for purposes of preparing his criminal defense. Port Officials called 9-1-1 to  
20 report a criminal trespass. Defendant Deputy Teets responded and spoke with Mr. Goff and  
21 Defendants Harbormaster Raymond Carpenter and Executive Director Greg Englin, who  
22 confirmed that they did not want Mr. Hordon in Mike Wallace Park. But by the time Deputy  
23 Teets arrived, Mr. Hordon and his lawyer had left.

24 1.5 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to  
25 take some pictures for purposes of preparing his criminal defense. Again Marina Lead Austin  
26 Goff called 9-1-1, and again Deputy Teets responded to the park, this time with Defendant  
27 Deputy Justin Childs. By the time they arrived, Mr. Hordon was no longer in the park, but

Deputy Teets and Deputy Childs found him a few blocks away and arrested Mr. Hordon for “criminal trespass,” assisted by Defendant Deputy Timothy Young. Deputy Teets then booked Mr. Hordon into the Kitsap County Jail on two counts of second-degree trespass and set bail at \$10,000. This amount was excessive and forced Mr. Hordon to spend another night in jail. The Deputies’ sole ground for arresting Mr. Hordon was the prior Criminal Trespass Warning issued by Deputy Trout on July 4, 2019.

1.6 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass, and the Sheriff has confirmed its effect in writing. Mr. Hordon has incurred legal fees in preparing his defense. His defense team filed a Motion to Dismiss on Monday, January 20, 2020, arguing that Mr. Hordon was arrested in violation of the First Amendment. A few days later, prior to filing a response to the Motion, a Kitsap County Deputy Prosecuting Attorney voluntarily dismissed the case without prejudice. Kitsap County could decide to prosecute Mr. Hordon for those same charges any time during the applicable statute of limitations. So not only was Mr. Hordon banned from Mike Wallace Park “FOREVER,” he lives in fear of being prosecuted any day, at the whim of Kitsap County.

1.7 The acts described above and in greater detail below violate the First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. All defendants have violated and suppressed Mr. Hordon’s First Amendment right to free speech.

## **II. PARTIES**

2.1 Plaintiff ROBIN DIRK HORDON is an individual residing in Kitsap County in the State of Washington.

2.2 Defendant KITSAP COUNTY SHERIFF GARY SIMPSON is an individual sued in his official capacity as the elected Sheriff of Kitsap County, and in his personal capacity. He resides in Kitsap County and at all times relevant was the Kitsap County Sheriff acting within the scope of his employment and under color of state law. Sheriff Simpson is a policymaker of Kitsap County with respect to the County’s “Criminal Trespass Warning” policies and program as well as the policies and practices governing the setting of pre-arraignment bail.

1           2.3     Defendant KITSAP COUNTY is a municipal corporation formed under the laws  
2 of the State of Washington located in the Western District of Washington.

3           2.4     Defendant KITSAP COUNTY SHERIFF'S OFFICE is a subdivision of Kitsap  
4 County, a county within the State of Washington and a municipal corporation located in the  
5 Western District of Washington. References to Kitsap County in this complaint cross-refer to  
6 the Kitsap County Sheriff's Office, and vice-versa.

7           2.5     Defendant DEPUTY MIKE MERRILL is an individual who at all times relevant  
8 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
9 color of state law.

10          2.6     Defendant DEPUTY ANDREW AMAN is an individual who at all times relevant  
11 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
12 color of state law.

13          2.7     Defendant DEPUTY BRAD TROUT is an individual who at all times relevant  
14 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
15 color of state law.

16          2.8     Defendant DEPUTY TONY GRAHAM is an individual who at all times relevant  
17 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
18 color of state law.

19          2.9     Defendant DEPUTY BENJAMIN TEETS is an individual who at all times  
20 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and  
21 under color of state law.

22          2.10    Defendant DEPUTY TIMOTHY YOUNG is an individual who at all times  
23 relevant was a Kitsap County Sheriff's Deputy acting within the scope of his employment and  
24 under color of state law.

25          2.11    Defendant DEPUTY JUSTIN CHILDS is an individual who at all times relevant  
26 was a Kitsap County Sheriff's Deputy acting within the scope of his employment and under  
27

1 color of state law.

2 2.12 Plaintiff originally sued the Port of Kingston, a municipal corporation formed  
3 under the laws of the State of Washington, and three of its officials, Harbormaster Raymond  
4 Carpenter, Executive Director Greg Englin, and Marina Lead Austin Goff. The Port of  
5 Kingston immediately revoked its “signs policy,” and the Port defendants soon reached a  
6 resolution with Plaintiff. The Port has since revised its “signs policy.”

### 7 **III. JURISDICTION AND VENUE**

8 3.1 This Court has jurisdiction pursuant to 42 U.S.C. § 1983, as well as 28 U.S.C. §§  
9 1331 and 1343.

10 3.2 Venue is appropriate in the Western District of Washington pursuant to 28 U.S.C.  
11 § 1391 because at least some of the Defendants reside in this judicial district and because the  
12 events and omissions giving rise to the claims alleged here occurred within the Western District  
13 of Washington.

### 14 **IV. FACTUAL ALLEGATIONS**

15 4.1 The Port of Kingston is a “Port District” located in Kingston, Washington, an  
16 unincorporated community located in Kitsap County. A “Port District” is a municipal  
17 corporation created by State law “for the purposes of acquisition, construction, maintenance,  
18 operation, development and regulation within the district of harbor improvements, rail or motor  
19 vehicle transfer and terminal facilities, water transfer and terminal facilities, air transfer and  
20 terminal facilities, or any combination of such transfer and terminal facilities, and other  
21 commercial transportation, transfer, handling, storage and terminal facilities, and industrial  
22 improvements.” RCW 53.04.010(1).

23 4.2 Port Districts are fundamentally public entities voted into being by an election of  
24 the people who live in the district. RCW 53.04.020. They are vested with governmental  
25 authority with the power to, among other things, acquire property by purchase or condemnation  
26 (RCW 53.08.010), raise revenues through bonds or special assessments (RCW 53.08.050),  
27 operate moorage facilities (RCW 53.08.310), establish rates and charges (RCW 53.08.070), and

1 promulgate “regulations for the use by tenants, agents, servants, licensees, invitees, suppliers,  
2 passengers, customers, shippers, business visitors, and members of the general public of any  
3 properties or facilities owned or operated by it,” (RCW 53.08.220). Port Districts are governed  
4 by Port Commissioners, who are publicly elected officials. RCW 53.12.

5 4.3 The Port of Kingston is currently one of 12 Port Districts in the State of  
6 Washington, encompassing 17 square miles of land at the northeastern end of the Kitsap  
7 Peninsula. The Port leases a significant portion of this land to the Washington State Ferry  
8 System to operate a car and passenger ferry between Kingston and Edmonds.

9 4.4 Near the ferry dock exists “Mike Wallace Park,” a public park created in about  
10 1997 when the Port converted an old boatyard and repair facility into a park with public  
11 restrooms, picnic tables, and a covered stage. According to the Port’s Comprehensive Plan of  
12 Harbor Improvements, Mike Wallace Park is “home to most of Kingston’s large, outdoor  
13 community events, including the Farmers Market, Concerts in the Cove, the Fourth of July  
14 Celebration in the summer, and Kingston Cove Christmas.”

15 4.5 The Port of Kingston has a set of published “Rules and Regulations,” which are  
16 available on its website. [https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-  
17 Regulations-FINAL-updated-Nov.-28-2018.pdf](https://portofkingston.org/wp-content/uploads/2019/02/Rules-and-Regulations-FINAL-updated-Nov.-28-2018.pdf) Those Rules and Regulations purport to govern  
18 all manner of conduct on “Port property” and at “Port facilities,” including the “post[ing]” of  
19 signs. At the time this lawsuit was originally filed, the Rules stated that “Signs may be posted in  
20 designated Port areas only after receiving the Harbormaster’s approval.” What constitutes a  
21 “sign” or a “post[ing]” was not defined, and there were no criteria by which the Harbormaster  
22 considered whether such a posting may be approved. That approval was entirely within the  
23 discretion of the Harbormaster. The Port’s Rules and Regulations did not otherwise mention or  
24 directly govern free speech activities, demonstrations, gatherings, or protests.

25 4.6 The “Kingston 4th of July Celebration” takes place in Mike Wallace Park each  
26 year on July 4, touting itself as the “longest continuously running 4th of July celebration West of  
27 the Mississippi.” The Celebration is planned and operated by the “Kingston Fourth of July

1 Celebration” corporation, a Washington non-profit organization. The Celebration features a  
2 parade, a “fun zone” for kids, a music festival, a fun run, and evening fireworks. The  
3 Celebration occupies a large area of Kingston, including Mike Wallace Park and the area around  
4 the Kingston Village Green Community Center. It is open to the public and does not require an  
5 entrance fee.

6 4.7 Plaintiff Robin Hordon is a life-long peaceful civil activist. In 2001-2002, while  
7 living in Reno, Nevada, Mr. Hordon participated in the Reno Anti War Coalition (RAWC) where  
8 he developed the concept of “Civil Informationing,” which sought to remedy some of the  
9 weaknesses of “protests” and marches. Civil Informationing involves public display of peaceful  
10 and thought-provoking messages with the goal of engaging members of the public in civil  
11 discourse about discrete topics. Mr. Hordon’s displays are typically free-standing signs with a  
12 base, and measure between 5-8 feet high and 2-3 feet wide, with some signs attached together for  
13 a total width of 5-10 feet. His displays have typically focused on the topics of women’s rights,  
14 Native American rights and values, healthcare as a human right, environmental preservation and  
15 conservation, anti-war, voting and democracy, and the expansion of democratic socialism. Mr.  
16 Hordon and his signs are well known to many, including Kitsap County Deputies. He drives a  
17 distinctive blue van that is known to the community and Kitsap County Deputies.

18 4.8 Mr. Hordon has practiced Civil Informationing in cities throughout the country  
19 and has done so all around the Puget Sound region for over a decade, including over 40 times at  
20 Mike Wallace Park in Kingston. Over the years, Mr. Hordon has found this method of activism  
21 to be both effective and rewarding, as it builds bridges and provokes dialogue rather than  
22 fomenting conflict. To be effective, Mr. Hordon seeks out public events and gatherings of people  
23 who are on their own time, such as at parades, holiday events, fairs, or musical shows.

24 4.9 In that vein, Mr. Hordon sought to engage in Civil Informationing on July 4,  
25 2019, at Kingston’s annual Fourth of July Celebration event. As he had done in prior years, he  
26 displayed five large display signs along the parade route that were designed to provoke thought  
27 and civil discourse. This day, Mr. Hordon had chosen signs that said “Green Peace – Yes to

1 Both,” “Save Earth,” “Elect Matrilineal Governances,” and “VOTE – Save Democracy.”

2 4.10 That afternoon, after the parade, Mr. Hordon moved his displays to Mike Wallace  
3 Park, where the crowds from the parade route and other events had migrated to listen to music  
4 and wait for the evening’s fireworks display. He transported them in his van and parked near the  
5 stage while he unloaded three of them.

6 4.11 As he was setting up the display signs off to the side of the stage, he was  
7 approached by two Port officials, who told him to remove the display.

8 4.12 No park visitors or members of the public had complained about the display signs.  
9 The signs were not blocking the view of the stage and were not interfering with pedestrian  
10 traffic.

11 4.13 Harbormaster Carpenter showed him the “Signs” Rule that purported to give him,  
12 the Harbormaster, the discretion to decide what signs he would approve. Mr. Hordon refused to  
13 remove the signs.

14 4.14 Harbormaster Carpenter accused Mr. Hordon of using profanity and smelling of  
15 alcohol. But, Harbormaster Carpenter did not tell Mr. Hordon to stop using profanity or to stop  
16 smelling like alcohol; rather, he was concerned with Mr. Hordon’s signs.

17 4.15 Rather than simply allow Mr. Hordon to carry on peacefully displaying his signs  
18 and engaging in civil discourse on matters of public concern, Harbormaster Carpenter decided to  
19 call the police to forcibly remove Mr. Hordon and his signs from Mike Wallace Park.

20 4.16 At about 5:25 pm, Defendants Deputy Merrill and Deputy Trout arrived at Mike  
21 Wallace Park and spoke with Defendants Harbormaster Carpenter and Marina Lead Austin Goff.  
22 The two Port officials showed the Deputies the Rule that required prior approval of the  
23 Harbormaster prior to “posting” signs in the park.

24 4.17 With this Rule in hand, the Deputies approached Mr. Hordon and told him that the  
25 Port officials were requiring him to remove his display signs. The Deputies showed him the  
26 Rule. Mr. Hordon responded in a loud voice because he wanted witnesses to the conversation  
27 with the police, firmly refusing to remove his display signs and telling the police that he had a



1 legal right to engage in speech and display his signs and banner in a public forum.

2 4.18 Shortly after 5:35, Defendant Deputy Aman arrived at the stage to assist in the  
3 police action against Mr. Hordon. According to his report, he noted that Mr. Hordon had  
4 “several signs displayed along the walk way [sic] that people were using.”

5 4.19 According to Deputy Aman’s report, Defendant Deputy Tony Graham arrived on  
6 the scene at about this time. Deputy Graham then participated in the subsequent events  
7 described below, aided and abetted constitutional harms, and failed to prevent constitutional  
8 harms.

9 4.20 Defendant Deputy Tony Graham arrived on the scene at about this time,  
10 participated in the subsequent events, and failed to prevent constitutional harms.

11 4.21 Deputy Aman’s report contains no allegation that he witnessed Mr. Hordon do  
12 anything disruptive or illegal. He then allowed Deputy Trout to use his department-issued cell  
13 phone to take pictures of Mr. Hordon’s signs. Deputy Aman later sent the pictures to the  
14 prosecutor’s office to assist in the prosecution of Mr. Hordon for displaying his signs in the park.

15 4.22 Defendant Deputy Merrill claimed to have then consulted with Kitsap County  
16 Deputy Prosecuting Attorney John Madden. Deputy Merrill also claimed that Mr. Madden  
17 advised him that the police did have the “authority to ask Hordon to remove his signs,” and that  
18 “Obstruction” would be the “best charge” if Deputy Merrill decided to arrest Mr. Hordon for  
19 failing to do so.

20 4.23 This is corroborated by Deputy Aman, who stated in his report:

21 A short time later Sgt. Merrill advised the Prosecutor had indicated that if the  
22 subject was not willing to comply with the Port of Kingston rules he either needed  
23 to leave or could be arrested for Obstructing. We next spoke with the  
24 Harbormaster, Raymond Carpenter, who indicated he had not [sic] issue if Robin  
25 was willing to discuss with him where he could place his signs. He advised if  
26 Robin was not willing to follow the rules he had no problem with trespassing him  
27 from the property.

4.24 This shows that Deputies Aman, Graham, Merrill and Trout knew that the reason  
the Port was excluding Mr. Hordon from the park was because of his signs and his refusal to

1 move them to a place designated and blessed by Harbormaster Carpenter under the Port's "no  
2 signs" policy.

3 4.25 As officers of the law, Deputies Aman, Graham, Merrill and Trout are sworn to  
4 uphold and defend the Constitution of the United States, and are well-aware that citizens have a  
5 right to peacefully speak on matters of public concern in a public park. These deputies know,  
6 and the law was clear, that citizens cannot be removed or excluded from public parks simply for  
7 engaging in peaceful and non-disruptive free speech activities.

8 4.26 Despite this knowledge, and armed with the County proclaimed policy statement  
9 from Deputy Prosecuting Attorney Madden, Deputy Merrill, accompanied by the other deputies,  
10 informed Mr. Hordon that he could either move his signs to an area acceptable to the  
11 Harbormaster or remove the signs from the park entirely, and if he refused to do one of these two  
12 things, the police would arrest him for "Obstruction." More than once, Mr. Hordon asked what  
13 "arrested for obstruction" meant, as he wanted to know whether he was being accused of  
14 obstructing a police officer, or obstructing pedestrian traffic. He was doing neither, but Deputy  
15 Merrill did not clarify.

16 4.27 Mr. Hordon did not want to be relegated to a less visible part of the park and  
17 believed he had the right to be exactly where he was. So, he refused to either move or remove  
18 his signs.

19 4.28 Shortly after 6 pm, Deputies Merrill, Trout, Graham, and Aman arrested Mr.  
20 Hordon based solely on his refusal to remove his signs. They placed him in handcuffs and  
21 escorted him to Defendant Deputy Trout's patrol vehicle for transport to the jail. They searched  
22 Mr. Hordon's person and advised him of his Fifth and Sixth Amendment rights, the so-called  
23 "Miranda rights." Defendant Deputy Trout then drove Mr. Hordon to the Kitsap County jail and  
24 booked him for "Obstruction," now making clear that the reason for arrest was obstruction of a  
25 police officer, and set bail at \$50,000.

26 4.29 By arresting Mr. Hordon, Deputies Merrill, Trout, Graham, and Aman violated  
27 the First and Fourth Amendment to the United States Constitution by preventing Mr. Hordon

1 from engaging in peaceful and non-disruptive free speech activities in a public park.

2 4.30 Arresting a person for failure to stop engaging in peaceful and non-disruptive free  
3 speech activities in a public park would chill a person of ordinary firmness from future free  
4 speech activity, and has chilled Mr. Hordon from engaging in free speech activity at Mike  
5 Wallace Park.

6 4.31 The directive to Mr. Hordon that he had to remove his signs or be arrested--  
7 vocalized by Deputy Merrill and supported and effectuated by Deputies Trout, Aman, and  
8 Graham--was not a lawful one. Therefore, there was no probable cause to arrest Mr. Hordon for  
9 "Obstructing" for failure to follow that directive.

10 4.32 Similarly, because people have a right to engage in peaceful and non-disruptive  
11 free speech activities in public parks, the Harbormaster's "trespass" action excluding Mr. Hordon  
12 from the park was also unlawful and unconstitutional. Therefore, there was no probable cause to  
13 arrest Mr. Hordon for "Trespass."

14 4.33 For the first time in his life, at age 71, Mr. Hordon spent a night in jail. The  
15 experience was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the  
16 experience. Kitsap County then pressed Trespass charges against Mr. Hordon, who was forced  
17 to hire a criminal defense attorney to defend him. He was arraigned the next day and released on  
18 his own recognizance.

19 4.34 The same day of the arrest, at "1900" hours (7 pm), Officer Trout issued a  
20 "Criminal Trespass Warning" that purported to ban Mr. Hordon from entering Mike Wallace  
21 Park and other Port property "FOREVER/NO EXPIRATION" for the stated reasons of "public  
22 intoxication," "disturbing the peace," and "threatening Port of Kingston employees." *See*  
23 Exhibit 1, attached.

24 4.35 Kitsap County authorizes its deputies to set bail at any level, within their  
25 discretion. Kitsap County has no actual written policy governing the setting of bail, and there are  
26 no criteria or factors that deputies are required to consider in doing so, including but not limited  
27 to the severity of the crime alleged and a defendant's ability to pay. It is simply a long-standing

1 accepted practice or custom to allow and authorize deputies to set bail at any level they wish.  
2 This de facto policy is arbitrary and results in a substantial number of cases in which bail is set  
3 excessively and unconstitutionally high, as it was in this case - twice.

4 4.36 Defendant Gary Simpson, the elected Sheriff, is the policymaker for purposes of  
5 policies related to bail setting.

6 4.37 Deputy Trout set bail at \$50,000, which is excessively high, and did so in  
7 retaliation for Mr. Hordon's First Amendment-protected comments, including that he (Deputy  
8 Trout) would be the one "in trouble." Mr. Hordon could not afford to pay \$5,000 for a bond so  
9 that he could be released. So he spent the night in jail.

10 4.38 The next day, on July 5, 2019, Mr. Hordon was arraigned. The Kitsap County  
11 Deputy Prosecuting Attorney went even farther than the Criminal Trespass Warning and asked  
12 the Court to exclude Mr. Hordon from *all Port property* (not just Mike Wallace Park) as a  
13 condition of release, but the District Court Judge denied that request.

14 4.39 The Criminal Trespass Warning does not state that the owner of the property, the  
15 Port of Kingston, had excluded Mr. Hordon from the property, though that was Officer Merrill's  
16 justification for arresting Mr. Hordon. And although the stated reasons for the Criminal Trespass  
17 Warning were public intoxication, disturbing the peace, and threatening Port of Kingston  
18 employees, these were not the Port's reasons for calling the police to have Mr. Hordon removed,  
19 and are therefore mere pretext. The sole reason for calling the police and having Mr. Hordon  
20 removed from the public park was his display of signs that had not been approved by the  
21 Harbormaster, and of which he disapproved.

22 4.40 The Criminal Trespass Warning warned that if Mr. Hordon should ever return to  
23 Mike Wallace Park at any time "for the time period listed above" (which was "FOREVER"), the  
24 police could arrest him and he would be prosecuted for "Trespass 1 RCW 9A.52.070 (gross  
25 misdemeanor) or Trespass 2 RCW 9A.52.080 (misdemeanor)."

26 4.41 The Criminal Trespass Warning is a standard Kitsap County form created under  
27 the authority of, and pursuant to the official policies of, Kitsap County and its Sheriff's Office.

1 The Kitsap County Sheriff's Office sent a copy of the Criminal Trespass Warning in this case to  
2 the Kitsap County Prosecuting Attorney's office, which received it on July 6, 2019.

3 4.42 The Criminal Trespass Warning form does not provide any information about or  
4 right to an appeal. Police can simply order a person removed and banned from a particular  
5 place—in this case a public park—for all eternity and that person has no ability to challenge that  
6 police order.

7 4.43 Even though the stated reasons for an exclusion order can be crimes (here, “public  
8 intoxication” and “disturbing the peace”), the police issue these orders before initiation of a  
9 criminal prosecution and without a criminal conviction.

10 4.44 Kitsap County's Criminal Trespass Warnings are entirely extra-judicial. No  
11 judicial officer ever reviews them to see if they are factually accurate or legally justified.

12 4.45 Because Kitsap County's Criminal Trespass Warnings banning people from  
13 places, including public parks, are issued prior to criminal conviction, without any opportunity to  
14 challenge or appeal them, and without approval or oversight by any court, Kitsap County's entire  
15 Criminal Trespass Warning system is unconstitutional and on its face violates the Fourteenth  
16 Amendment's guarantees of due process of law.

17 4.46 To this day, Mr. Hordon is excluded from Mike Wallace Park under fear and  
18 penalty of arrest and prosecution. This constitutes an ongoing constitutional violation and harm  
19 for which Mr. Hordon has no adequate remedy at law, and he is and will continue to be  
20 prevented from entering that public park, let alone from engaging in the First Amendment-  
21 protected free speech activities for which he was banned.

22 4.47 Mr. Hordon's fear of arrest and prosecution are well-founded. Two weeks later,  
23 on July 18, 2019, Mr. Hordon returned to Mike Wallace Park with his criminal defense attorney  
24 to prepare his defense. The Port's Marina Lead called 9-1-1 to report a criminal trespass based  
25 on the Criminal Trespass Warning. Defendant Deputy Teets responded and spoke with Port  
26 officials, who confirmed that they did not want Mr. Hordon in Mike Wallace Park and wanted  
27 him arrested based on the Criminal Trespass Warning. But by the time Deputy Teets arrived,

1 Mr. Hordon and his lawyer had left.

2 4.48 In his report from July 18, 2019, Deputy Teets stated: “I reviewed a prior arrest of  
3 HORDON in ILeads dated 7/4/19 for obstruction and observed that HORDON was served with a  
4 trespass warning for the Port of Kingston at the jail after his arrest on 7/4/19,” showing that he  
5 knew the basis for the underlying arrest for failure to remove signs from the public park.

6 4.49 Three days later, on July 21, 2019, Mr. Hordon returned to Mike Wallace Park to  
7 take some pictures for purposes of preparing his criminal defense. Again, the Marina Lead  
8 called 9-1-1, and again Deputy Teets responded to the park, this time with Defendant Deputy  
9 Justin Childs. By the time they arrived, Mr. Hordon had left the park. But Deputy Teets and  
10 Deputy Childs found him a few blocks away and arrested him for “criminal trespass,” assisted by  
11 Defendant Deputy Timothy Young. The Deputies’ sole ground for arresting Mr. Hordon was the  
12 prior Criminal Trespass Warning issued by Deputy Trout on July 4, 2019, which had been  
13 initiated and motivated by a desire to prohibit Mr. Hordon from engaging in free speech  
14 activities.

15 4.50 Deputy Teets’ report from July 21, 2019 states:

16 Hordon was last seen in his distinctive blue van by the gazebo at the Port. Goff  
17 stated he saw Hordon pull his van in right by the Port stage and offload some  
18 signs on the walkway where he was arrested on 7/4/2019. Hordon had two small  
19 signs and one large banner. He stayed approximately 10-15 minutes in that area,  
and was alone. Hordon left one sign behind. Goff said he would provide footage  
from the Port security cameras when it was available.

20 This report shows that Mr. Hordon and his “distinctive blue van” were familiar to Deputy Teets.  
21 On information and belief, and supported by reasonable inference from the known facts, Deputy  
22 Teets knew the reason for the prior arrest and exclusion from the public park, that Mr. Hordon  
23 was excluded for failing to stop engaging in free speech activities in a public park, as did  
24 Deputies Child and Young.

25 4.51 Deputies Teets, Child, and Young arrested Mr. Hordon pursuant to an  
26 unconstitutional “Criminal Trespass Warning” system created and maintained by Kitsap County  
27 and its Sheriff’s Office. Because the Trespass Warning was itself invalid, and because Port

1 officials had unlawfully and unconstitutionally excluded Mr. Hordon from the public park, there  
 2 was no probable cause to arrest Mr. Hordon for “trespass.”

3 4.52 These facts serve to underscore the unconstitutional nature of the Criminal  
 4 Trespass Warning system. The lack of opportunity to appeal or challenge the original exclusion  
 5 order, in violation of the Due Process clause of the Fourteenth Amendment, led directly to and  
 6 proximately caused the second unconstitutional arrest.

7 4.53 Deputy Teets booked Mr. Hordon into the Kitsap County Jail on two counts of  
 8 trespass in the second degree, and set bail at \$10,000. This amount was excessively and  
 9 unconstitutionally high. Mr. Hordon could not afford to pay \$1,000 for a bond to be released.

10 4.54 For the second time in his life, Mr. Hordon spent a night in jail. The experience  
 11 was unpleasant, and Mr. Hordon suffered emotional trauma and distress from the experience.

12 4.55 Kitsap County then prosecuted Mr. Hordon for two counts of criminal trespass.  
 13 Mr. Hordon incurred legal fees in preparing his defense.

14 4.56 On November 26, 2019, Mr. Hordon delivered a letter to Sheriff Gary Simpson,  
 15 the elected Sheriff and a policymaker for the Sheriff’s office and Kitsap County with respect to  
 16 the “Criminal Trespass Warning” policy and program. Mr. Hordon explained that the Criminal  
 17 Trespass Warning was violating his rights to access public property, and asked Kitsap County  
 18 not to arrest him when accessing these areas.

19 4.57 On December 2, 2019, Defendant Kitsap County Sheriff Gary Simpson responded  
 20 in a letter, stating:

21 The Port of Kingston has lawfully restricted your access to Port property, property  
 22 you have continued to access illegally. Therefore, deputies have the legal  
 23 authority to arrest you on Port and/or State managed properties.

24 You have been lawfully trespassed from Port of Kingston properties is indicated  
 25 on the Criminal Trespass Warning issued to you on July 4, 2019. You refused to  
 26 sign the document issued to you and have provided me with a copy for reference.  
 27 This suggests you have notice of the trespass warning yet have elected to violate  
 this order by continuing to access Port property, which includes the parking lot,  
 driveways through the parking lot, the Port Office and the Mike Wallace Park. . . .  
 Each time you access these properties you are committing the crime of trespass.



\* \* \*

I am ordering you to cease and desist these criminal activities or you will be subject to arrest for the criminal act of trespass upon the Port of Kingston properties.

If you have further clarification or need legal advice on this matter, I suggest you seek legal counsel.

4.58 The Sheriff's December 2, 2019 letter is a statement of policy, practice or custom of Kitsap County and is a personal endorsement of an unconstitutional exclusion order from a public park.

4.59 The Sheriff's December 2, 2019 letter constitutes ratification of the Deputies' actions, and shows that they acted pursuant to County policy, practice or custom, and that County policy, practice or custom was the moving force behind the constitutional violations by the Deputies.

4.60 In the criminal matter, Mr. Hordon's criminal defense team filed a Motion to Dismiss on Monday, January 20, 2020, arguing that the Deputies arrested Mr. Hordon on both occasions in violation of the First Amendment.

4.61 A few days later, without filing any response to the Motion, the Kitsap County Deputy Prosecuting Attorney voluntarily dismissed the case without prejudice. Because the dismissal was without prejudice, Kitsap County could decide to prosecute Mr. Hordon for those same charges any time during the applicable statute of limitations. So not only was Mr. Hordon banned from Mike Wallace Park "FOREVER" on fear and penalty of arrest, he lives in fear of being prosecuted any day, at the whim of the Kitsap County Prosecuting Attorney.

## V. INJUNCTION ALLEGATIONS

5.1 Kitsap County's "Criminal Trespass Warning" policy and program empowers individual Sheriff's Deputies the power to exclude any person from any place or property, including public parks, for any length of time, including "FOREVER," for any stated reason, including alleged criminal activity. These bans are carried out without any judicial oversight or



1 approval. The Warning form itself does not provide notice to the excluded person of any right or  
 2 procedure to appeal the exclusion order, and no appellate or review process in fact exists. As  
 3 such, Kitsap County's "Criminal Trespass Warning" policy and program violate the Fourteenth  
 4 Amendment's guarantee of due process of law, both substantively and procedurally.

5 5.2 Mr. Hordon seeks an order enjoining enforcement of the Criminal Trespass  
 6 Warning issued by Deputy Trout that purports to exclude him from Mike Wallace Park in  
 7 Kingston, Washington. Because the policy and program is also procedurally unconstitutional in  
 8 every case because of its failure to provide any mechanism of appeal or opportunity to be heard,  
 9 Mr. Hordon also seeks an order mandating removal or amendment of Kitsap County's Criminal  
 10 Trespass Warning policy and program.

## 11 VI. CLAIMS

### 12 FIRST CAUSE OF ACTION

#### 13 VIOLATIONS OF THE FIRST AMENDMENT

14 6.1 This cause of action is brought against all Defendants. The facts alleged above  
 15 constitute violations of Mr. Hordon's First Amendment Right to free speech. This cause of  
 16 action is brought under 42 U.S.C. Section 1983 and the First Amendment to the United States  
 17 Constitution. Among other things, this claim specifically includes Deputy Trout's retaliation  
 18 against Mr. Hordon for speech through the setting of an excessively high bail.

#### 19 SECOND CAUSE OF ACTION

#### 20 VIOLATIONS OF THE FOURTH AMENDMENT

21 6.2 This cause of action is brought against all seven individual Sheriff's Deputy  
 22 Defendants, as well as Kitsap County and its Sheriff's Office. Each of the individual defendants  
 23 were involved in and failed to prevent the unlawful and unconstitutional arrest of Mr. Hordon  
 24 without probable cause to believe he had committed any crime. The arrests were performed  
 25 pursuant to Kitsap County official policy as demonstrated by the Sheriff's letter ratifying the  
 26 officers' conduct and warning Plaintiff not to enter Port property, including Mike Wallace Park,  
 27 upon penalty of arrest and prosecution. The facts alleged above constitute violations of Mr.

1 Hordon's Fourth Amendment Right to be free from unreasonable seizure without a warrant  
 2 supported by probable cause. This cause of action is brought under 42 U.S.C. Section 1983 and  
 3 the Fourth Amendment to the United States Constitution.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATIONS OF THE FOURTEENTH AMENDMENT – PROCEDURAL DUE**

6 **PROCESS**

7 6.3 This cause of action is brought only against Defendant Kitsap County and Sheriff  
 8 Gary Simpson in his official capacity for their unconstitutional "Criminal Trespass Warning"  
 9 policy and program. The facts alleged above constitute violations of Mr. Hordon's Fourteenth  
 10 Amendment Right due process of law prior to deprivation of liberty and property. Indeed,  
 11 Kitsap County violates the due process rights of any person subjected to its Criminal Trespass  
 12 Warning policy and program. This cause of action is brought under 42 U.S.C. Section 1983 and  
 13 the Fourteenth Amendment to the United States Constitution.

14 **FOURTH CAUSE OF ACTION**

15 **VIOLATIONS OF THE EIGHTH AND FOURTEENTH AMENDMENTS –**

16 **EXCESSIVE BAIL**

17 6.4 This cause of action is brought against Defendant Kitsap County and Sheriff Gary  
 18 Simpson in his official capacity for their unconstitutional bail-setting policy, custom and  
 19 practice, and against Deputies Trout and Teets for setting Mr. Hordon's bail excessively high  
 20 upon booking him into jail. The facts alleged above constitute violations of Mr. Hordon's Eighth  
 21 and Fourteenth Amendment rights to be free from excessive bail. Indeed, Kitsap County violates  
 22 the Eighth and Fourteenth Amendment rights of many persons subjected to its bail-setting policy,  
 23 custom and practice. This cause of action is brought under 42 U.S.C. Section 1983 and the  
 24 Eighth and Fourteenth Amendments to the United States Constitution.

**FIFTH CAUSE OF ACTION**

**VIOLATIONS OF THE FOURTEENTH AMENDMENT – DUE PROCESS AND EQUAL  
PROTECTION IN BAIL SETTING**

6.5 Kitsap County authorizes its deputies to set bail at any level, and this decision is completely within their discretion. Kitsap County has no actual written policy governing the setting of bail, and there are no criteria or factors that deputies are required to consider in doing so, including but not limited to the crime alleged and the defendant's ability to pay. It is simply a long-standing accepted practice or custom to allow and authorize deputies to set bail at any level they wish. This lack of standards constitutes arbitrary and capricious government action and is a violation of substantive and procedural due process.

6.6 Defendants Kitsap County and Sheriff Gary Simpson also unconstitutionally set money bail without meaningful considerations of other alternatives or taking into account the individual's ability to pay. By setting an arbitrary monetary bail amount, Defendants discriminate against those unable to pay the amount while providing a substantial benefit to individuals who have the capacity to pay in violation of the Fourteenth Amendment Equal Protection clause.

**VII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff requests relief against Defendants as follows:

7.1 Prospective and Mandatory Injunctive relief ordering Kitsap County to remove the "Criminal Trespass Warning" against Mr. Hordon and enjoining the County and its agents from enforcing that Trespass Warning by arresting Plaintiff should he choose to enter the public park known as "Mike Wallace Park."

7.2 Prospective and Mandatory Injunctive relief ordering Kitsap County to amend its "Criminal Trespass Warning" policy and form to provide procedural due process protections to anyone subjected to this policy, including but not limited to notice and opportunity to be heard regarding the legality and propriety of any police exclusion order, and to comply with the requirements of the Fourteenth Amendment to the United States Constitution.

7.5 Compensatory damages for emotional distress and mental harm, including but not limited to dignitary and reputational harm caused by the arrest and incarceration for two nights in the first time in Plaintiff's life.

7.7 Costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988 and to the extent otherwise permitted by law.

7.9 Such other relief as may be just and equitable.

MacDONALD HOAGUE &amp; BAYLESS



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